

Justifying prison breaks as civil disobedience

ISAAC SHUR*

Northeastern University

Abstract I argue that given the persistent injustice present within the Prison Industrial Complex in the United States, many incarcerated individuals would be justified in attempting to escape and that these prison breaks may qualify as acts of civil disobedience. After an introduction in section one, section two offers a critique of the classical liberal conception of civil disobedience envisioned by John Rawls. Contrary to Rawls, I argue that acts of civil disobedience can involve both violence and evasion of punishment, both of which are necessary components of prison breaks. In section three I outline the broad circumstances in which escape attempts would be justified, which are when individuals have either been incarcerated on unjust grounds (such as coercive plea bargains, draconian laws, or institutionalized discrimination) or when individuals are subject to inhumane conditions within prison (such as physical or sexual abuse, inadequate medical care, and overcrowding). Although this framework is formulated with the U.S. criminal justice system in mind, it is potentially applicable to other instances of incarceration if they're similarly unjust such as prisons in other countries, migrant detention centers, or psychiatric wards. I then outline four requirements which must be met for these prison breaks to qualify as civil disobedience. First, escape must be attempted as a last resort. Second, violence and other law-breaking must be reasonable, meaning it is done with precision, discretion, and proportion. Third, escapees hold the burden of proving they have been subject to injustice. Fourth and finally, the act of escape must contain other key components of civil disobedience such as persuasion, communication, and publicity, which will most likely be accomplished via coordination with non-incarcerated individuals. In section four I address the distinction between prison reform and abolition.

*Isaac Shur is a senior at Northeastern University in Boston, Massachusetts where he studies Politics, Philosophy, and Economics. After graduating he plans on pursuing a PhD in philosophy, with the goal of becoming a professor. His main areas of interest are social, political, and moral philosophy. Outside of philosophy, Isaac enjoys music, literature, and theatre. He is also the vice president and treasurer of Northeastern's Shakespeare Society, with which he typically performs every semester.

1 Introduction

Prison breaks are generally not considered acceptable, that much is obvious. Conventional wisdom leads us to believe that people in prison deserve to be there due to crimes they've committed, and should be kept there to prevent them from committing more crimes. But this is not necessarily the case. Many innocent people are strong armed into pleading guilty by prosecutors, since plea bargains eliminate the risk of receiving an even harsher sentence during trial.¹ Additionally, many people are imprisoned based on laws that may qualify as unjust, such as non violent drug offenses or sex work offenses involving consenting parties. It is clear that grave injustice occurs within the criminal justice system, and more specifically the Prison Industrial Complex.² My aim is not to prove this, as this has been thoroughly argued elsewhere by the likes of John Pfaff, Angela Davis, and Michelle Alexander.³ Rather I argue that in the face of these injustices, incarcerated individuals may be justified in attempting to escape prison and subsequently evade reimprisonment, and that such conduct may qualify as civil disobedience.

This might seem radical and surprising at first since prison breaks are inherently a violent form of evading punishment, whereas civil disobedience is often understood to be neither violent nor evasive. It is for this reason that section two offers a critique of the classical liberal conception of civil disobedience envisioned by John Rawls. Contrary to Rawls, I argue that acts of civil disobedience can involve both violence and evasion of punishment. In section three I outline the appropriate circumstances and requirements which qualify certain escape attempts as justified acts of civil disobedience. In section four I address the distinction between prison reform and abolition.

1. John Pfaff argues that the power of prosecutors is actually the primary cause of increased prison populations. See John Pfaff, *Locked In: The True Causes of Mass Incarceration—and How to Achieve Real Reform* (2017).

2. The term Prison Industrial Complex refers to the ever expanding overlapping financial interests of state punishment and private industry, such as the many government contracts given to CoreCivic (formerly known as the Corrections Corporation of America or CCA) to build and maintain private prisons.

3. Angela Davis, *Are Prisons Obsolete?* (Seven Stories Press, 2003); Pfaff, *Locked In*; Michelle Alexander and Cornel West, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (The New Press, 2010).

2 Violence and evasion in civil disobedience: a critique of the liberal conception

Although arguments in favor of violent civil disobedience have been given,⁴ nonviolence is still assumed to be a part of the very definition of civil disobedience in much contemporary analysis.⁵ This is no doubt due in large part to John Rawls' definition of civil disobedience stated in *A Theory of Justice*. For Rawls, civil disobedience must be "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government."⁶ Rawls also thought that when practicing civil disobedience, fidelity to the law is expressed "by the willingness to accept the legal consequences of one's conduct."⁷ Clearly any form of resistance that involves violence or the evasion of punishment will not qualify as civil disobedience under Rawls' framework.⁸ This certainly sounds like the intuitive conception of civil disobedience that we associate with figures such as Martin Luther King Jr. or Mahatma Gandhi. But this conception has its critics, and some even question whether or not it truly matches up with the actions of King and Gandhi.⁹ Pushing back on this traditional conception, contemporary philosophers have offered alternative conceptions of civil disobedience that allow for both evasion of punishment and the use of violence.¹⁰ A defense of these frameworks will lay the necessary groundwork for this project.

4. Allan C. Hutchinson, "Civil Disobedience: Its Logic and Language," *The Law Teacher* 13, no. 1 (1979): 1–11; John Morreall, "The Justifiability of Violent Civil Disobedience," *Canadian Journal of Philosophy* 6, no. 1 (1976): 35–47; Robin Celikates, "Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm," *Constellations* 23, no. 1 (2016): 37–45.

5. See for instance William Smith, "Policing Civil Disobedience," *Political Studies* 60, no. 4 (2012): 826–42. Smith's project of determining how to police civil disobedience would obviously require drastic changes if the disobedience in question were to be violent.

6. John Rawls, *A Theory of Justice* (1971; repr., Harvard University Press, 2005), 364.

7. Ibid.

8. Under a strict Rawlsian framework, violent and evasive resistance may instead qualify as "militant action" (see *ibid.*, 367–68). Some prison breaks may indeed qualify as militant action, but those which meet the requirements laid out in section three will be better classified as civil disobedience, due to the restrictions set on the use of violence and the element of persuasion that is required.

9. Candice Delmas, *A Duty to Resist: When Disobedience Should Be Uncivil* (New York, USA: Oxford University Press, 2018).

10. Celikates, "Rethinking Civil Disobedience," 37–45; Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford University Press, 2012). Celikates' and Brownlee's conceptions diverge from Delmas' in an important way. While Celikates and Brownlee argue civil disobedience itself can be violent, Delmas argues for a distinction between civil and uncivil disobedience that are both potentially defensible as principled disobedience. I believe this distinction has merit but for the sake of simplicity and focus I'll use the more popular term civil disobedience inclusively as per Celikates and Brownlee.

2.1 Evasion of punishment

I'll start with the evasion of punishment,¹¹ which becomes paradoxical in the case of mass incarceration, where the punishment itself is identified as unjust and in need of change. Philosophers such as Kimberley Brownlee and Howard Zinn point this out as well.¹² Brownlee argues that accepting the legal consequences of one's actions necessarily concedes the legitimacy of the punishment.¹³ Therefore it would be impossible to both accept a given punishment (thus granting it legitimacy) while also protesting against said instance of punishment as unjust via civil disobedience, as this would lead to the conclusion that the punishment is unjust yet somehow legitimate. This is a puzzling conclusion at best, and a logical contradiction as worst. Surely in order for the criminal justice system to maintain legitimacy it must promote justice rather than injustice. It cannot be both unjust and legitimate, at least not without reducing legitimacy to moral arbitrariness. Furthermore, as Zinn points out, civil disobedience necessarily begins with the premise that the law must sometimes be disobeyed.¹⁴ So why should obedience suddenly be required once we get to the punishment stage of the legal process? If disobedience is justified at the outset it seems arbitrary, even backwards, to reinstate a requirement of obedience later on. It would be more consistent and sensible for disobedience to remain justifiable throughout the entire process, punishment and all.

Rather than willingly accepting the legal consequences of their actions, Zinn and Brownlee argue citizens need only accept the *risk* of being legally punished.¹⁵ There are two advantages to replacing the acceptance of punishment with the acceptance of risk. First, accepting the risk of punishment rather than the punishment itself avoids the contradiction of granting legitimacy to instances of injustice. Accepting the risk of being imprisoned merely acknowledges the state's ability to incarcerate but grants no legitimacy to such incarceration, thus leaving open the possibility that such practices of incarceration are unjust. Second, acceptance of risk rather than punishment allows citizens to sustain their disobedience, thus maintaining consistency, rather than arbitrarily rescinding their disobedience when it comes time for punishment. This makes civilly disobedient prison breaks more immediately plausible, as surely anyone who attempts to escape from prison must accept the risk of punishment. It also demonstrates that the idea of evasive civil disobedience is not as new and radical as one may assume.

Some object by invoking Martin Luther King Jr.'s assertion that those who dis-

11. Some theorists, such as Brownlee, distinguish between evasion in general, and evasion of state punishment specifically. Throughout this piece I will use 'evasion' to refer exclusively to the latter sense.

12. Howard Zinn, "Law, Justice, and Disobedience," *Notre Dame Journal of Law, Ethics and Public Policy* 5, no. 4 (1991): 899–920; Brownlee, *Conscience and Conviction*.

13. Brownlee, *Conscience and Conviction*, 8, 23.

14. Zinn, "Law, Justice, and Disobedience," 914.

15. Brownlee, *Conscience and Conviction*, 146–47; Zinn, "Law, Justice, and Disobedience," 913–15.

obey the law and subsequently accept their penalty demonstrate “the highest respect for law.”¹⁶ But Zinn argues that King’s motivation for accepting punishment was grounded instrumentally rather than in principle.¹⁷ King speaks of one “who willingly accepts the penalty of imprisonment *in order to arouse the conscience of the community* over its injustice.”¹⁸ Interpreting King’s words strictly, we might come to the conclusion that one must only accept imprisonment insofar as this appeals to the community’s conscience. Even King himself did not always accept punishment in full, for instance when he accepted premature release from jail in 1960 after an anonymous benefactor pleaded his case from behind the scenes.¹⁹ Although this premature release was extralegal rather than illegal, it shows that King was willing to serve less time than he was sentenced to. Based on this, and a strict reading of his letter, I’d argue that King understood that imprisonment had a limited communicative purpose, and once this upper limit was reached he knew he would be able to affect more change from the outside than in. Important and well known figures like King might accept *temporary* imprisonment for *instrumental* purposes, but the American conscience seems particularly unmoved by mass incarceration of regular citizens since prison populations continue to rise while conditions deteriorate. Thus, ordinary people stuck in the unjust Prison Industrial Complex need not accept imprisonment by King’s own logic. They will be better able to arouse the community’s conscience if they evade, as I’ll argue later on. Even still, one might maintain the view that disobedients should express fidelity to the law, thus departing from the interpretation of King I’ve argued for here. In the face of such a view I ask: why should citizens respect the law when the law so clearly disrespects citizens by inflicting injustice upon them? Respect between citizens and the systems which govern them should be mutual, not one sided. Further, the refusal to accept such injustice should be seen as expressing fidelity to the *ideal* of a just system in the face of an unjust one.

2.2 Violence

Violence is a more difficult component to analyze due to the question of what exactly qualifies as violence. John Morreall argues that if we interpret violence as stripping someone of value, integrity, dignity, sacredness, or their rights to body, autonomy, and private property then we clearly cannot limit the term violence to obvious physical acts but must extend it to psychological harm, verbal acts, and coercion in general.²⁰ Similarly and more recently, Robin Celikates distinguishes between a narrow understanding of violence as strictly physical harm to people, and a broad understanding

16. Martin Luther King Jr., “Letter from a Birmingham Jail,” 1963, https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.

17. Zinn, “Law, Justice, and Disobedience,” 915–16.

18. King Jr., “Letter from a Birmingham Jail.” Emphasis mine.

19. Zinn, “Law, Justice, and Disobedience,” 915.

20. Morreall, “The Justifiability of Violent Civil Disobedience,” 37–45.

that is closer to Morreall's view which includes things like destruction of property, violence to one's self, and psychological violence.²¹ Both Morreall and Celikates argue that taking the broad view of violence forces us to drop the requirement of nonviolence in civil disobedience, or else admit that many actions which we generally consider to be civilly disobedient will no longer qualify as such. For instance, blocking entrances to buildings in protest.²² Such an act, after all, involves physically challenging the autonomy of those who wish to enter and exit the building. Ultimately this challenge to autonomy is a use of force which, as Morreall puts it, "has much more in common with a physically violent protest than with a letter-writing campaign."²³

On the other hand, if we take the narrow view of violence for the sake of maintaining the nonviolence requirement then we lose powerful tools which could potentially change the status quo and reduce overall suffering. As Celikates argues, the requirement of nonviolence threatens to reduce civil disobedience to a purely symbolic moral claim with no potential to affect any real change on political systems.²⁴ As we'll see in the next section, this is certainly the case regarding prisoners' ability to reform the system from the inside. In other words, nonviolence can place drastic restrictions on both the options available for civil disobedients and the effectiveness of those options. So, the requirement should be dropped, and some degree of violence should be permissible.²⁵

More important than the distinction between violence or nonviolence, Morreall argues, is the distinction between coercion and persuasion, where persuasion is an attempt to change one's mind while coercion is an attempt to change one's behavior using force or the threat of force.²⁶ In other words, the persuader attempts to align the persuadee's views with their own, while the coercer ignores the coercee's views entirely. Acts of protest and resistance might necessarily be somewhat coercive in some contexts, but this need not disqualify them as civil disobedience as long as the element of persuasion is still present to a sufficient degree. An action that is wholly coercive and not at all persuasive won't qualify as civil disobedience. So in order for prison breaks to qualify, the violence exhibited will need to strike a balance between coercion and persuasion. This brings me to the next stage of this project. Surely not all prison breaks will maintain a sufficient balance between persuasion and coercion. Some prison breaks will be justified acts of civil disobedience, and others will not.

21. Celikates, "Rethinking Civil Disobedience," 41–42.

22. Morreall, "The Justifiability of Violent Civil Disobedience," 39–41.

23. Ibid., 40.

24. Celikates, "Rethinking Civil Disobedience," 41–43.

25. This conclusion is shared by Brownlee, *Conscience and Conviction*, 21–23 as well.

26. Morreall, "The Justifiability of Violent Civil Disobedience," 40–43.

3 Prison breaks as civil disobedience

It is one thing to morally justify prison breaks, it is another thing to classify them as acts of civil disobedience. Acts which qualify as civil disobedience may nevertheless be morally unjustified (bigots might peacefully protest against laws which prohibit discrimination in the workplace, for instance). As such, the tasks of justification and classification must be undergone separately.

3.1 Justification

I argue that there are two broad circumstances in which escaping prison would be morally justified. Either the sentence is objectionable due to procedural injustices that it resulted from, or the incarcerated individual faces such grave and persistent injustice within the prison itself that they fear for their health and safety. A prison sentence itself might be objectionable in a number of ways: if the individual was coerced to plead guilty by a prosecutor; if they were coerced into the crime yet sentenced anyways; if they've been given a disproportionate sentence due to characteristics such as race, religion, or gender; if they've been incarcerated based on the violation of unjust laws,²⁷ including laws criminalizing consensual and victimless acts (here following the liberal commitment against paternalism); or if the crime was committed in order to preserve their health and safety or that of others (such as economic crime to avoid starvation, or providing sanctuary to undocumented migrants). For injustice within the prison itself to qualify as a threat to one's health and safety we might turn to instances of physical and sexual assault, excessive use of solitary confinement, and prison overcrowding, which are all too common in the U.S. incarceration system.²⁸

27. This raises the obvious question of what makes a law unjust, an important question too complicated to answer sufficiently here. Yet I submit that we can conceive of unjust laws and point to past instances of them such as fugitive slave laws. Other cases are less clear. I for one believe that nonviolent drug consumers and consensual sex workers are imprisoned on the basis of unjust laws.

28. Davis, *Are Prisons Obsolete?*, 77-83; American Civil Liberties Union, "The Dangerous Overuse of Solitary Confinement in the United States," 2014, <https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states>; American Civil Liberties Union, "Overcrowding and Overuse of Imprisonment in the United States," 2015, <https://www.ohchr.org/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf>. According to American Civil Liberties Union, "Overcrowding and Overuse..." U.S. prison populations have risen 700% since 1970, which has outpaced both general population growth and crime rates. Most facilities are far beyond capacity "with prisoners sleeping in gyms and hallways or triple- and quadruple-bunked in cells." This is the sort of overcrowding which justifies escape.

3.2 Classification

Beyond these broad circumstances there are additional requirements which need to be met by escapees for their attempts to be classified as civil disobedience. For a more detailed framework of justified violence, I turn to Allan C. Hutchinson, who gives four qualifications which must be met for violence to be justified in civil disobedience. First, it must be used as a last resort (this is reminiscent of Rawls' stipulation²⁹ that any form of civil disobedience must occur after all available legal channels have been exhausted). Second, the violence must be a proportional response to a serious violation of rights. Third, the burden of proof regarding the aforementioned violation of rights is on those who commit and advocate for the violence. Finally, violence must be used with precision and discretion.³⁰ Beyond Hutchinson's requirements, escapees must also meet Morreall's requirement of persuasion identified earlier. I've combined and distilled Hutchinson's and Morreall's frameworks into four points, which can be used to evaluate escape attempts on a case by case basis to determine whether they can be classified as civil disobedience.

3.2.1 Escape as a last resort

The sheer fact that an individual has ended up in prison means they have gone through the available legal channels already, and often faced injustices such as coercion into plea deals. There are few channels available within prisons themselves to remedy injustice. Congress has continually passed legislation making litigation against prisons difficult if not impossible, such as the Prison Litigation Reform Act of 1996 which requires inmates to exhaust internal remedies before being eligible for lawsuits. But these internal remedies are designed by prison administrations to be overly complex and ultimately useless. Take for instance the 602 form which California prisoners are required to fill out to begin the internal grievance process. These forms have a notorious reputation among prisoners for being lost, ignored, and even burned by guards in front of inmates, who are then left with no other channels for recourse.³¹ The end result is that prisoners are stifled during the internal process, which then blocks them from accessing the courts.³² Additionally, prison guards who might theoretically be capable of remedying injustices are often committing the injustices in the first place or at least turning a blind eye to them.³³ Thus it is not difficult to argue that prisoners facing injus-

29. Rawls, *A Theory of Justice*, 363–68.

30. Hutchinson, "Civil Disobedience," 1–11.

31. Kitty Calavita, *Invitation to Law and Society: An Introduction to the Study of Real Law*, 2nd ed. (University of Chicago Press, 2010), 47–50.

32. Ibid.

33. See for instance David Sonenstein, "California Prisoners Say Videos Show 'Gladiator Fights' At Soledad State Prison," *Shadow Proof*, 2019, <https://shadowproof.com/2019/02/18/california-prisoners-say-videos-show-gladiator-fights-at-soledad-state-prison/>; Jason Renard Walker, "Grey Suit Protection: Ellis Unit Guards Admit Assaulting Prisoners, But Aren't Held Account-

tice in the mass incarceration system have exhausted their legal channels, which were limited in the first place.

Extralegal channels which lack violence and evasion have also proven ineffective in prisons. Past acts of disobedience such as hunger strikes and work stoppages have left prisoner's demands unmet.³⁴ This is due largely to the position of power that correctional authorities wield over those who attempt to strike. The most recent prison strike in 2018 was met with harsh preemptive suppression from prison authorities, such as the transfer and isolation of prisoner activists and jailhouse lawyers under false pretenses.³⁵ Even violent (yet non evasive) tactics have failed in the past such as the 1971 Attica revolt, which resulted in the death or injury of 112 inmates and left their demands unmet.³⁶ This is not to say that prisoners must attempt all of the methods of resistance mentioned here before attempting escape, rather I argue that given the ineffectiveness of these methods escape attempts may be the only viable option prisoners have in the first place.

3.2.2 Reasonable violence

I find Hutchinson's second and fourth requirements similar enough to lump them together as one requirement; that the violence used to escape and evade must be reasonable. This means it must be proportionate to the violence they are subject to, and it must be used with precision and discretion. Escapees should avoid direct confrontation with correctional officers and law enforcement as best they can, only engaging in physical violence when they are subject to physical violence themselves. Preventative and retaliatory violence would not be permitted. Violence against civilians should be avoided altogether unless zealous private citizens attempt to directly pursue and detain escapees, in which case they have in essence filled the role of law enforcement. Then the same principles of proportionality, precision, and discretion apply. Escapees will no doubt be forced to break other laws while evading capture. This additional law breaking must follow the same rule as violence and be proportionate to the escapees' needs and similarly precise so as to minimize harm to others. Stealing small amounts of food or money, and perhaps transportation (be it vehicle theft or not paying for public transit) would be justified.

able," *Incarcerated Workers Organizing Committee*, 2019, <https://incarceratedworkers.org/news/grey-suit-protection-ellis-unit-guardians-admit-assaulting-prisoners-arent-held-accountable>.

34. Delmas, *A Duty to Resist*, 183–84.

35. Paul Stanley Holdorf and Melinda R. Paterson, "Prisoners' Legal Advocacy Network (PLAN) Mounts Legal Responses to Widespread Reports of Prisoner Abuses in the Aftermath of the 2018 National Prison Strike," 2018, <https://www.nlg.org/plan-prison-strike-response-2018/>.

36. Delmas, *A Duty to Resist*, 180–83.

3.2.3 Burden of proof

Injustice within the Prison Industrial Complex is well documented, and often self evident. For instance, physical abuse perpetrated by correctional officers and other inmates is likely to leave visible traces on the body. Unjust conditions such as overcrowding and the use of solitary confinement are matters of public record.³⁷ In sum, the same instances of injustice which ground prison breaks as a potential form of civil disobedience also serve as the proof which fulfills this third requirement. The main obstacle in proving instances of injustice would likely be state action. Authorities might destroy and delete damning records or attempt to cover-up instances of violence and abuse. It is likely that blame would be shifted from officials to inmates themselves, as was the case with the most 2018 prison strike.³⁸ The difficulty in proving injustice will vary greatly from case to case. Sometimes it will be obvious but there will often be battles in the court of both law and public opinion. Overcoming state interference in providing proof of injustice will likely require collaboration between people inside and outside of prisons, which is addressed in the next section.

3.2.4 Persuasion

The requirement of persuasion intertwines naturally with three other important components of civil disobedience: publicity, communication, and collaboration. I argue that escapees can account for all four of these components in the same way. Escaped convicts naturally have incentive to hide from the public eye while the police have incentive to publicize the escape in order to raise awareness of potential danger as well as procure tips from the public. However I believe it is sensible to require publicity that is intentional on behalf of the escapee, if for no other reason than to also fulfill persuasion through communication to the public. Escapees could communicate by disseminating their stories through collaborators on the outside who are capable of being in the public eye more directly such as family and friends or perhaps sympathetic journalists. These collaborators will also be paramount in providing proof of injustice. While escapees will likely be occupied primarily with evading authorities, allies such as journalists and activists can investigate claims of abuse, violence, and inhumane conditions. Conducting research on the use of solitary confinement on particular prisoners, for example, might fulfill both requirements three and four as injustice could be uncovered and publicized in order to raise awareness and appeal to the public conscience.

The aims of persuasion are three-fold. First, escapees aim to persuade the public and policy makers that reform of the criminal justice system is necessary from standpoints of both justice and efficiency,³⁹ thus pursuing legal change. Second, by commu-

37. See note 27 above.

38. Holdorf and Paterson, "PLAN Mounts Legal Responses..."

39. The justice aspect is obvious, but there is an efficiency element as well since mass incarceration

nicating that they intend no harm to anyone and will only use violence as a means of avoiding being re-imprisoned, escapees aim to convince people that the typical conception of convicts as inherently dangerous and malicious is not necessarily accurate. This serves to break down the stereotypes of convicts that partially contribute to the injustice of the mass incarceration system, or at least combat apathy to the injustice and generate sympathy for escapees by publicizing their stories. Finally, meeting and communicating with activists and journalists incurs a level of risk for escapees which demonstrates that their escape is grounded in genuine concern for injustice and a desire for change, rather than simply self-preservation.⁴⁰

4 The pursuit of change: reform or abolition?

Activists and abolitionists will rightfully wonder whether the purpose of this framework is to work towards the abolition of incarceration or merely reform. I believe there is some sense in which this distinction does not matter for this project. The justification of prison breaks can be seen as a tool for either reform or abolition. Further, I'm of the mindset that meaningful reform and total abolition must both begin with decarceration, for instance the decriminalization of non violent drug use and sex work involving consenting parties.⁴¹ Yet there is a danger in escapees and collaborators not specifying their demands for change and choosing these demands with care. Correctional authorities might appease escapees and collaborators by enacting minimal and incremental changes that serve to perpetuate the Prison Industrial Complex rather than dismantle it. For example by increasing the size of solitary confinement cells and decreasing their overall use rather than simply eliminating the practice altogether. Or lawmakers might reduce mandatory minimums for nonviolent drug use rather than decriminalizing it entirely. These are very real threats to both meaningful reform and abolition alike, thus the targets of legal change should be chosen with care and communicated explicitly.

There will necessarily be thought, discussion, and disagreement over what the appropriate targets of change are or should be. I believe the obvious targets to consider are the disproportionate powers of prosecutors over defendants, laws criminalizing consensual and victimless acts, overcrowding, solitary confinement, and the death penalty. Attempts at appeasement from authorities which fall short of eliminating these injustices entirely are inadequate, and escapees and their collaborators should not settle for such appeasement, as this will perpetuate rather than eliminate injustice. Thus, rather than protesting injustice *in general*, there must be *specific targets and goals*,

constitutes a hefty use of resources that could be used elsewhere. The difficulty of former convicts to procure employment is another issue of efficiency perpetuated by mass incarceration.

40. I thank the reviewers at *Aporia* for raising this point.

41. It is obvious how this qualifies as reform, but Davis, *Are Prisons Obsolete?*, 107–11 identifies this as an imperative of abolition as well.

regardless of whether the final aim is reform or abolition.

5 Conclusion

The proposal to classify certain instances of prison breaks as civil disobedience may seem radical. Analogies of fugitive slave escapes⁴² and evasion of the Nazi regime during WWII come to mind. Even though mass incarceration may not be as blatantly unjust or as large in scale as these other examples I believe the injustice is sufficient to warrant civil disobedience. Although this framework is formulated with the U.S. criminal justice system in mind, it is potentially applicable to other instances of incarceration if they're similarly unjust such as prisons in other countries, migrant detention centers, or psychiatric wards.

There are likely many dimensions of this issue not sufficiently addressed here. For example, what exactly makes a law unjust? Is it potentially possible for state punishment to be unjust yet still legitimate? And can escapees view the government in general as legitimate while protesting against such large parts of it as prisons and the criminal justice system? Clearly more analysis is necessary in order to cement the justifiability of prison breaks as acts of civil disobedience. But by arguing against the requirements of nonviolence and non evasiveness while fulfilling other requirements such as persuasion, publicity, collaboration, and communication I believe I have presented a sufficient case to begin the conversation.

References

Alexander, Michelle, and Cornel West. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness*. The New Press, 2010.

American Civil Liberties Union. "Overcrowding and Overuse of Imprisonment in the United States." 2015. <https://www.ohchr.org/Documents/Issues/RuleOfLaw/OverIncarceration/ACLU.pdf>.

———. "The Dangerous Overuse of Solitary Confinement in the United States." 2014. <https://www.aclu.org/report/dangerous-overuse-solitary-confinement-united-states>.

Brownlee, Kimberley. *Conscience and Conviction: The Case for Civil Disobedience*. Oxford University Press, 2012.

42. Particularly keeping in mind that slavery is legal and constitutional as a form of punishment under the 13th Amendment. For a thorough critical examination of this, see Ava DuVernay, dir., *13th* (United States: Kandoo Films, 2016).

- Calavita, Kitty. *Invitation to Law and Society: An Introduction to the Study of Real Law*. 2nd ed. University of Chicago Press, 2010.
- Celikates, Robin. "Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm." *Constellations* 23, no. 1 (2016): 37–45.
- Davis, Angela. *Are Prisons Obsolete?* Seven Stories Press, 2003.
- Delmas, Candice. *A Duty to Resist: When Disobedience Should Be Uncivil*. New York, USA: Oxford University Press, 2018.
- DuVernay, Ava, dir. *13th*. United States: Kandoo Films, 2016.
- Holdorf, Paul Stanley, and Melinda R. Paterson. "Prisoners' Legal Advocacy Network (PLAN) Mounts Legal Responses to Widespread Reports of Prisoner Abuses in the Aftermath of the 2018 National Prison Strike." 2018. <https://www.nlg.org/plan-prison-strike-response-2018/>.
- Hutchinson, Allan C. "Civil Disobedience: Its Logic and Language." *The Law Teacher* 13, no. 1 (1979): 1–11.
- King Jr., Martin Luther. "Letter from a Birmingham Jail." 1963. https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html.
- Morreall, John. "The Justifiability of Violent Civil Disobedience." *Canadian Journal of Philosophy* 6, no. 1 (1976): 35–47.
- Pfaff, John. *Locked In: The True Causes of Mass Incarceration—and How to Achieve Real Reform*. 2017.
- Rawls, John. *A Theory of Justice*. 1971. Reprint, Harvard University Press, 2005.
- Smith, William. "Policing Civil Disobedience." *Political Studies* 60, no. 4 (2012): 826–42.
- Sonestein, David. "California Prisoners Say Videos Show 'Gladiator Fights' At Soledad State Prison." *Shadow Proof*, 2019. <https://shadowproof.com/2019/02/18/california-prisoners-say-videos-show-gladiator-fights-at-soledad-state-prison/>.
- Walker, Jason Renard. "Grey Suit Protection: Ellis Unit Guards Admit Assaulting Prisoners, But Aren't Held Accountable." *Incarcerated Workers Organizing Committee*, 2019. <https://incarceratedworkers.org/news/grey-suit-protection-ellis-unit-guards-admit-assaulting-prisoners-arent-held-accountable>.
- Zinn, Howard. "Law, Justice, and Disobedience." *Notre Dame Journal of Law, Ethics and Public Policy* 5, no. 4 (1991): 899–920.